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ABSTRACT

This document contains the transcripts of three speeches given at the 1975 annual convention of the Association for Education in Journalism. Frank Peers' "Border Impact: The Historical Perspective" examines the effect of U.S. media on Canadian media and Canadian identity. It is argued that Canadian identity tends to be expressed in regional or other terms, rather than in terms of a nationwide feeling of identity. "The Legal Perspective: Recent Developments in the Law of Freedom of Expression," by Peter Grant, examines such topics as libel and slander, administration of justice, obscenity, access to government information, and Canadian broadcast-licensing policy. "Freedom, Responsibility, Prospects for the Future," by Keith Davey, summarizes the report of the Senate Committee on Mass Media which investigated Canadian media voices, made recommendations for better media voices, and discussed Canadian cultural survival. The Canadian magazine industry is also examined in the transcript of a question-answer session involving the three speakers listed above and Drs. Donald Gilmore and Harold Nelson. (TS)

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Border Impact:

Canadian and U.S. Mass Media and Canadian Identity

Proceedings of the AEJ Convention Plenary Sessions of 18 August 1975

Edited by
Richard R. Cole
University of North Carolina

Published by the International Communication Division
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This monograph is being sent to all current members of the International Communication Division of the Association for Education in Journalism. Additional copies may be purchased for $2.00 each from Prof. Vernon A. Keel at the address below.

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Printed at The Printing Laboratory, Department of Journalism and Mass Communication, South Dakota State University, Brookings, S.D. 57006

Preface

In 1975, the annual convention of the Association for Education in Journalism was held outside the United States for the first time. AEJ delegates met at Carleton University in Ottawa, Ontario, Aug. 16-20. Canada and its mass media were discussed in numerous convention papers and in several special sessions.

A highlight of the Canadian content of the convention was a double plenary session on the morning of Aug. 18. Titled "Border Impact: Canadian and U.S. Media and Canadian Identity," the two plenaries explored the often convoluted relationships between U.S. and Canadian mass media.

Any credit for the success of the plenaries should go to the three Canadian speakers: Prof. Frank W. Peers, Mr. Peter Grant and Sen. Keith Davey. They provided a wealth of information and insightful commentary. Their efforts are deeply appreciated.

Because the plenaries were received so well by the audience in Ottawa, and because the content should interest numerous journalism and mass communication teachers and students, the proceedings are being published in this monograph.

Although the International Communication Division of AEJ had overall responsibility for these plenaries and is publishing this monograph, it should be emphasized that other AEJ groups were active in sponsoring, planning, financing and carrying out the plenaries. The Professional Freedom and Responsibility Committee, the Law Division and the Canadian hosts at Carleton University were especially active. Special thanks go to the following persons: Prof. Mary Ann Yodelis, chairman of the Professional Freedom and Responsibility Committee; Profs. Donald L. Gillmor and David L. Grey, head and program chairman of the Law Division; and Profs. T. Joseph Scanlon and Peter Johansen of the School of Journalism at Carleton University. Thanks also go to the Radio-Television Division for helping to defray part of the expenses.

The plenaries were tape-recorded at Carleton, and the tapes were transcribed and edited in the School of Journalism at the University of North Carolina at Chapel Hill. The excellent efforts of Ms. Debra Harper and Mr. William Poteat, student assistants in the School of Journalism, are sincerely appreciated. Editing was kept to a minimum in order to maintain the rather informal nature of the speakers' presentations.

Special thanks go to Prof. Vernon A. Keel, 1975-76 head of the International Communication Division, for allowing this monograph to be printed at South Dakota State University, where he is head of the Department of Journalism and Mass Communication.--Richard R. Cole, 1974-75 head, International Communication Division.

BORDER IMPACT: THE HISTORICAL PERSPECTIVE

BY FRANK W. PEERS

Prof. Peers is professor of political science in the Department of Political Economy at the University of Toronto and is assistant editor of the Canadian Journal of Political Science. He has worked in radio and television programming with the Canadian Broadcasting Corporation for 13 years as producer and program organizer, then as head of public affairs and director of information programming. He is the author of, among other works, The Politics of Canadian Broadcasting: 1920-1951 (University of Toronto Press), and he has participated in international meetings in India, Pakistan, France, Germany, Italy and Great Britain. He attended the University of Alberta and the University of Toronto, taking degrees first in history and then in political science.

Prof. Richard R. Cole (School of Journalism at the University of North Carolina at Chapel Hill), 1974-75 Head of the International Communication Division of AEJ, introduced Prof. Peers.

I have been asked to introduce the topic of "Border Impact: Canadian and U.S. Media and Canadian Identity," by giving a kind of historical perspective focusing on the broadcast media. I think in both the print and broadcast media in this country, there has been some expectation that communications will serve particular Canadian needs. For the mass media, especially radio and TV, this suggests that Canadians should be able to communicate with Canadians over the facilities which they control. Nearly everyone in Canada who wants it should have access to the messages transmitted. These communications should be available at least in Canada's two official languages, English and French. The service should be available not only to the richer and more populous centers but to all regions and to the more thinly populated stretches of the vast Canadian expanse. The substance of the communications should not be mainly or overwhelmingly that which was designed to serve or appeal to some other people.

Now stated in that way, it sounds like a prescription that would be adopted by the people of any self-respecting nation state. But we Canadians are not at all sure that what we have devised will carry out these objectives. Almost each conscious measure proposed or adopted to further the objectives becomes an issue, a matter of controversy.

Broadcasting is perhaps the best area in which to see how communications policy for Canada has been worked out, or at least worked at. The choice of broadcasting has the advantage that the jurisdiction is at least at one governmental level, the federal. That is not necessarily so, of course, with other means of communication.

Broadcasting also offers a means of communication that interests everyone, that everyone wants to receive. So the federal government was pushed into action earlier than was generally the case with the other media. And of all the forms of communication, it was the one in which border impact was perceived the most strongly.

As in other liberal democracies, the Canadian government was loath to get involved in media ownership or direct control. In this country, we have no first amendment, but our tradition was that government must not control speech or other expression, excepting the usual proscriptions against libel and obscenity. Beyond this reluctance to direct government involvement in any form of mass communication, there was the more arguable assumption that channels of communication are best left in the hands of private owners, who compete in the marketplace as do producers of other goods and services.

Liberalism and capitalism seem to complement one another, as they had risen together historically. The problem was that in the 1920's, the first decade of radio broadcasting, the following of that laissez-faire formula seemed to be leading to the obliteration of any national control or self-determination in the new medium of communication. This had already happened in the case of feature film, as is pointed out at the time by the editor of the Ottawa Citizen, a man named Charles Bowman. He urged the government to act, to prevent Canadian radio from falling into the hands of the newly established United States networks, NBC and Columbia. But the government needed more than this so-far-unrealized danger to stir it to action.

There were other factors. The commercial development of radio had not given adequate service to large segments of the Canadian population, notably to people in rural and frontier areas, and to the third of the population that was French-speaking. Providing programs in French costs more money, and business in the main was in the hands of English-speaking owners and advertisers. But the uneven terms of competition with U.S. broadcasting interests were the most worrisome difficulty, and one that small private owners had no hope of handling unaided. There were only a few Canadian stations (speaking now of 1927-28) of any considerable power measured in kilowatts. And these strove for U.S. network connections, NBC or CBS. Even the principal French-language station in Montreal became an American network affiliate. In 1928, the government appointed a commission of inquiry to recommend what should be done in radio broadcasting.

It was headed by a prominent Toronto banker, Sir John Aird. The other two members were a well-respected electrical engineer from Montreal, and Charles Bowman, whom I have already mentioned as the editor of the Ottawa Citizen. Aird, in spite of his knighthood, was not British, as one might have guessed. He was a Canadian. But Bowman was of British origin; he knew a good deal about the BBC and was impressed by it. The other two members of the commission were thought to be disposed in favor

of private enterprise. That was not surprising in the case of Aird, the president of one of our largest Canadian banks.

In the end, the Aird Commission unanimously recommended national ownership and control of all radio stations, more or less on the model of the BBC. The members said their investigations convinced them that Canadians wanted Canadian radio accessible to all. And they doubted that private owners would be able to provide and maintain a satisfactory Canadian service.

Then came two or three years of agitation for and against the Aird recommendations (the private station owners naturally agitating against them). Then a Conservative government headed by a corporation lawyer, R.B. Bennett, himself a millionaire, brought in a bill to establish a Canadian radio broadcasting commission to regulate broadcasting. But in addition, it would be a programming body and an owner of stations.

Thus began the rather curious mixed system of private ownership and public ownership in radio and TV that has lasted to this day. In 1936, four years after the initial broadcasting act of Bennett's government, a Liberal government headed by William Lion McKinsey King transformed the radio commission into the Canadian Broadcasting Corporation, the CBC, a public corporation similar to the BBC but with powers to regulate all private broadcasting stations, which were expected to perform a supplementary and even subservient role.

You can infer that the private broadcasters, although they had not succeeded in blocking the creation of a public broadcasting and public production agency, nevertheless had succeeded in blocking the full implementation of the Aird Commission's recommendations. They had survived alongside the public agency and remained to fight another day.

With the example of the United States next door, the private station owners never for a moment accepted a subservient position. Even though the legislation of 1932 and 1936 had received all party support in the House of Commons (a rare thing in our parliamentary system), the private broadcasters carried on a vigorous campaign to have the legislation changed. As times grew more prosperous, the private stations grew more prosperous. And with the arrival of Canadian TV in 1952, the stakes got higher.

The Liberals throughout these years remained in power, and gradually the private owners won over the chief opposition party to their side, the Conservative party. Indeed, they had a certain amount of justice on their side. It seemed to be wrong to many persons without a direct interest in broadcasting that an agency which itself had an active part in the production and transmission of programs should regulate other private owners even if many of those private owners were affiliated with the public agency networks.

It seemed to be, in the words of an active opposition leader of the day, John Diefenbaker, a case of the CBC being both cop and competitor.

When the Conservatives won the majority in 1958, the stage was set for a revision of the system. The CBC would remain as a programming agency and an operator of stations and networks. But it, as well as the private stations, would be subject to a separate regulatory board, called first, from 1958 to 1968, the Board of Broadcast Governors, and since then, the Canadian Radio-Television Commission, or CRTC.

Now this may seem a long detour from our discussion of border impact, but I wanted to introduce the main institutional actors in the steps taken to establish or preserve some semblance of the distinctively Canadian broadcasting service.

It has always been recognized that if, as the Aird Commission said, Canadians want Canadian radio, they also want access to American radio and TV programs. This is especially true of English-speaking Canadians, who are more than 70 per cent of the total population. Since more than half of the Canadian population is within the service range of U.S. stations, even considering the more limited range of TV stations, there is, of course, ready access for those Canadians who live close to the border. With the amount of money the U.S. networks have to produce or purchase programs, with the American skills in light entertainment so highly developed in broadcasting and other media, with the engines of publicity promoting programs, actors, comedians, pop musicians and other performers, and with such promotion associated with the sale of products that are distributed on both sides of the border, there is no wonder that the average Canadian listener or viewer is more conscious of American program series and American stars than of Canadian--whether the Canadian series are produced by public or private broadcasters.

In Canada, as in nearly all Western countries, the most popular programs are light entertainment and sports programming. And here the advantages are clearly on the American side. This is particularly so if commercial considerations determine the pattern of the schedule, not only in the United States, for that would be taken for granted, but also in Canada, where the networks feel they must compete for viewers on very much the same terms as have been established south of the border.

What recourse is there for Canadians to maintain their own broadcasting services in the face of such competition, especially in those areas adjacent to the United States?

1. <u>Large government grants or subsidies, or license fees for set ownership?</u>

The first device that occurs is that the government could pour much more money into broadcasting, either by grants and subsidies, or by imposing a license fee on all set owners as is so often done in European countries. But the latter measure would be extremely unpopular, since U.S. programs are designed to appear free; this again sets the pattern of public expectations. The government does provide most revenues of the CBC (although not all, for the CBC has remained, at least in its TV service, partly commercial). But to provide full services in English and French--and in AM, FM and TV-- on a scale of the U.S. programming expenditures would be quite beyond the means of a population one-tenth that of the United States.

2. CBC as principal producer and disseminator of programs?

Second, Canadians could rely on the CBC as the principal means of producing and disseminating programs. This in fact was the situation roughly until 1958. In the CBC, which is expected to spend money rather than make money, most of the revenues at least go to purchasing programs. For the private stations and networks, a much smaller share of the revenue goes into programs, and as various investigating bodies have discovered, a fairly generous share goes into profits for the individual or corporate owners. But even when the CBC was dominant in the entire system, as it is not today, public taste, reinforced by the demands of private station affiliates, resulted in the CBC itself distributing a large number of U.S. programs. This added the advantage of bringing to more Canadians the greater variety of programs that resulted from such imports. It also reinforced the notion that every Canadian has a God-given right to receive almost the total output of New York and Hollywood.

3. License more Canadian networks?

Another course might be taken: to license more network services than the CBC's second and third networks, privately owned and commercially operated.

A second TV network was created in 1962, and there has since been the beginning of a third English-language TV network. One would think that with more Canadian services to choose from, more Canadian programs would be brought into view. Paradoxically, this has not happened. In fact, the reverse.

The private Canadian networks cannot afford to produce extensive programs. With each additional station or network licensed, each cut of the pie becomes smaller. In order to compete for audiences, the networks import for use in prime time American programs whose appeal is already proven, and which are sometimes made available to Canadian networks at almost loss-leader prices. Original productions, the genuine made-in-Canada article, are placed in network positions where relatively few viewers will see them. Thus the proportion of viewing

hours for American programs has gone up, not down. I am calling attention to the difference in having, arithmetically, more Canadian programs in the schedules and the measurement of audience, of course, which is so dependent on prime-time viewing.

4. Regulation of the number of foreign programs?

Recourse can be had to regulation to limit the number of foreign programs, including U.S. programs, carried by Canadian stations.

In the case of radio, this objective has been translated in terms of the proportion of musical compositions played on the air. I think it's easier, perhaps, to think of TV, which is by all odds the more controversial of the two media, and the medium in which the American impact is greatest. Most radio tends to be local in nature, even if the musical substance of the programs carried is not.

Regulation of this sort--regulation to limit the amount of American programming over the Canadian stations and networks--was not attempted before 1958, when the CBC's domination of the networks was regarded as assuring a modicum of Canadian programming. When the CBC lost its regulatory authority, and when a private TV network emerged, more precise regulations seemed the obvious answer to the likelihood that stations, in maximizing their profits, would seek the least expensive sources of programming consistent with the satisfactory level of audience. That meant imports from U.S. networks, record companies and the rest.

The problem with regulation as a device to insure the Canadian content, as it has come to be known, is that regulation itself is hardly creative. Broadcasters can be told what not to do, but they are not helped very much to do a more creative job in carrying out the responsibilities they supposedly assumed when they were granted a license. They are not helped very much by such "Thou shalt nots."

In this respect, the Aird Commission was perhaps on surer ground in supposing that a public organization modeled on the BBC might be more effective in making broadcasting Canadian, than later investigators were, who emphasized the necessity for tough regulation of private owners, depending on their revenues from advertisers. I'm thinking here of, let's say, the Fowler Commission, another commission of inquiry in 1957, or a committee of inquiry also headed by Robert Fowler in 1964-1965. Fowler tended to emphasize the necessity for stringent regulation of all station licensees.

In any case, Canada has some elements of both the main solutions, public broadcasting in the form of the CBC, and rather stringent regulation by the CRTC, a much more active regulatory body than the FCC, at least so far as broadcasting is concerned.

But the problem remains.

Canadian broadcasting is largely commercial in organization and impulse, and as such it takes its cues from the dominant commercial enterprise of the United States. Canadian industry is to a large extent American-owned. Consumer goods in this country are in the main produced by U.S. branch plants. The advertising industry, including the broadcasting component, which includes the sales efforts of all Canadian stations and networks, is geared to the same patterns of selling that exist south of the border.

The listener and viewer have accepted their roles as primarily that of consumer, in Canada as in the United States. The expectation is that programs will be delivered as a byproduct of selling, and listeners and viewers receive programs passively, as they do any other consumer good. I should, of course, qualify that: they tend to receive programs passively, but you will make allowances for my shorthand.

The listener or viewer is not surprised to learn that program choices are made on the basis of audience ratings. He is told, indeed, that this is the most democratic way, even if he grumbles now and then that one series seems to be much the same as another, whatever the channel that he turns to.

In about 40% of Canadian households, he has access to more channels than ever before, the result of cable distribution of TV programs. What perfect democratic bliss! Now he may have the chance of seeing "Adam 12" four times in one week, as I'm told is true here in Ottawa.

Cable does provide a service to Canadians, and I don't want to depreciate it: more channels, better definition for color sets, even a French station, or an Ontario educational station, or PBS, in localities where these services were previously unavailable. But mainly the effect is to make it easier to view the more distant American stations.

At one time, the private Canadian stations regarded the CBC as their principal rival and competitor. Now all that is lost in a common concern for survival.

With the audience fragmented not only by a slowly increasing number of Canadian channels but also by a doubling of channels through cable transmission, the CRTC and a number of the smaller TV stations are forecasting doom. Even French-language stations in Quebec are feeling the pinch. We may see more measures proposed by Canadian agencies that will be viewed by some American networks, self-interested or not, as evidence that Canadian nationalism is running amuck.

Is there a sense of Canadian identity?

The final question I will now return to:

Given all this rather sad story from a Canadian nationalist viewpoint, is there really any substantial phenomenon that can be described as a sense of Canadian identity?

I would argue that there is, although such a sense of Canadian identity tends to be expressed in regional or other terms, more than in terms of a nationwide feeling of identity.

There is, after all, a difference in the political traditions of this country and those of the United States, which are also rather pervasive in affecting our popular attitudes. For Americans who regard Canadians as just another regional variety of Americans, that confusion is understandable if you are addressing yourselves to English-speaking Canadians. The question hardly arises, however, if you are speaking to French Canadians. And so far at least, the majority of English- and French-speaking Canadians do desire to maintain some kind of political association. But the question would not disappear if suddenly French Canada decided to become a state, independent of the rest of the country.

There is still, I think, a sense that there must be ways for Canadians to make their own major decisions. I personally would hope that, for example, we can find ways of stopping the headlong rush to destroy non-renewable resources in the interest of a higher standard of living. This kind of decision might best, might more quickly, be found in a smaller political community than in one the size of the United States. That would be perhaps one of my principal reasons for desiring to maintain a separate political identity.

And to retain a separate political identity, I would think we need to continue to exchange at least a minimal number of messages among ourselves over facilities that we own and control ourselves.

Thank you.

THE LEGAL PERSPECTIVE: RECENT DEVELOPMENTS IN THE LAW OF FREEDOM OF EXPRESSION

BY PETER S. GRANT

Mr. Grant is a barrister in the law firm of McCarthy and McCarthy, which has offices in Toronto and Ottawa. A specialist in mass communications law, he is editor of the Canadian Communications Law Review, a journal on communications, law and public policy. In the past several years, he has been carrying out research for a textbook on cable TV and broadcasting, to be titled Canadian Communications Law and Administrative Policy. He has edited several communications law publications, including a 1,000-page, two-volume work titled The Broadcasting and Cable Television Regulatory Handbook, published by the Law Society of Upper Canada in May 1973; a second edition in three volumes will be published soon.

He has acted as a consultant to the Canadian Computer Communication Task Force, four provincial governments and UNESCO in Paris. He has taught communications law at various Canadian law schools and now is special counsel to the Canadian Radio and TV Commission in Ottawa. He is a prize-winning graduate of the Faculty of Law of the University of Toronto and in addition has studied at the Eastman School of Music in Rochester, New York, and has worked as a musical composer and arranger.

Prof. Dwight L. Teeter (Department of Journalism at the University of Kentucky), a founder of the Law Division of AEJ, introduced Mr. Grant.

I'm delighted to be able to address an assembly primarily composed of American teachers of journalism. As you know, I'm a barrister and solicitor, not a journalist or journalism teacher. I have nothing against journalists, of course. I wouldn't want my son or daughter to marry one, but that's another matter!

In Canada, we don't usually refer to lawyers as attorneys, the word used in the United States. We call them barristers and solicitors, which is a reflection of British tradition, which I find unfortunate, since barristers always seems to connote being disbarred, and solicitors has all its own unfortunate connotations.

It serves to illustrate a point which is, I think, central to evaluating the difference in the law of freedom of expression in Canada and the United States. Canadian law is based primarily on British precedent, not American precedent, and we always find in certain areas that there is a striking difference indeed.

I should mention one other interesting feature. Communications lawyers in the United States tend to be rather numerous; there are in fact more than 250 of them. The number of lawyers in private practice in Canada that spend over 10 per cent of their time in communications law is less than five. Therefore we are dealing with an area in which most Canadian lawyers are jacks of all trades and masters of none.

First of all, I should tell you where I want to go with these comments, which I hope will be very informal. I would like to discuss four or five crunch areas in freedom of expression in the United States, and comment briefly on the distinctions found in this country and on how American and British practice have impacted on Canadian practice. And then I would like to make a few observations on some unique contributions that Canada has to offer in the area of freedom of expression.

Libel and Slander

Let's start examining a few of these critical areas in the law of freedom of expression. We might begin by looking at the law of libel and slander. In the United States, you benefit a great deal from a reliance on the first amendment, particularly since the New York Times vs. Sullivan case in 1964, which has severely, from the point of view of plaintiffs, inhibited the right of plaintiffs to recover libel damages against newspapers, even where there are some factual inaccuracies, provided that the newspaper has not misquoted or inaccurately reported on a malicious basis.

In Canada, that's not the law. In fact, the law of libel and slander here is based on British tradition. To begin with, we have no first amendment; the only constitution in this country is an interesting and rather ancient statute passed by the British Parliament in 1867 called the British-North America Act. It's a rather archaic statute that doesn't have anything in it about freedom of expression. It spends most of the time allocating legislative functions between the provinces and the federal government. And no function seems to relate much to freedom of expression. Criminal law goes to the federal government; local institutions and municipalities go to the provincial government; both of the levels of government can tax. That's about it.

So we're left with the rather unfortunate feeling that whatever freedom of expression we have is based on custom and parliamentary tradition. One feature of this particular Western democracy is that it is a parliamentary democracy, and that has some interesting connotations.

Now in the libel and slander field, we have a real problem in that even a small factual inaccuracy can give rise to liability. However, we have three countervailing factors. Again, they are based on British tradition:

1) An interesting feature is that in Canadian courts, if you want to sue somebody, and you lose, you pay not only the cost of your own lawyer but also the costs of the other side. Now that is a rather novel concept in American law, rarely seen, but in Canadian and British practice it is very common. It's called covering the cost. It has one

interesting effect; it stops a lot of nuisance actions.

2) In most Canadian provinces, we consider a contingency fee grounds for disbarment. That means if you want to hire a lawyer to take your action, he will not do it on a speculative basis. You pay him whether he wins or loses. That, too, tends to stop nuisance actions.

3) The third factor is a statutory protection that you have to give notice to a newspaper seven days before you commence action. Usually it's that time period. If within that period the newspaper extends an apology, the amount of damages assessable in a typical libel action, with some exceptions, is limited to special damages--such as loss of income, contractual damage and the like. This differs from what you might see in a number of American cases; large pain-and-suffering damages or injury to reputation at large.

Now these factors taken together, I think, probably counter the basic problem, which is that we have no acceptance by our judicial branch of a basic freedom-of-speech protection to the basic liability. But the statutes themselves tend to protect newspapers to a great degree.

There is one aspect of Canadian law, however, that is more retrograde than that in the United States, and also more retrograde, surprisingly, than it is in Great Britain. It has become evident only in the last two years, through an interesting technicality, through a number of actions against the Canadian Broadcasting Corporation. Now we permit prior restraint in libel and slander actions, and we also permit prior restraint by the courts in comment on judicial trials. This, I think, is probably the most surprising aspect of Canadian law, and also the most obvious aspect against the public interest. If you are the plantiff in a libel case, it is possible to get an injunction to stop a newspaper from publishing an allegedly libelous column or comment.

Let us suppose that later on the trial is held. But prior to the trial, a newspaper says, "Well, I'm going to win the trial anyway, so we're going to publish." Under Canadian law, it's unfortunate--it's scandalous really--that we have something called the Collateral Bar Rule. It's applied in numerous other injunction actions, and judges have never seen fit to distinguish newspapers from the Collateral Bar Rule. If you win a trial--so that, for example, your newspaper should have been able to publish the allegedly libelous statement all along--that is no defense to an action for contempt against the breach of the earlier injunction.

It's one of the technical anomalies that have never been caught by the press in Canada because the press has not noticed it. It doesn't show up until the odd action where someone brings an interlocutory injunction. But it is an obvious, and I think scandalous, example of the judicial insensitivity to what in the United States would be first amendment considerations.

Administration of Justice

Now after we move away from libel and slander, you get to an area like administration of justice. Again Canada has a great reflection of British practice.

In the United States, the press reports what it feels like reporting. The problem is: Can you convince the prosecuting attorney or the defense to breach his own canons and disclose things? But if, for example, the prosecutor discloses that the defendant has confessed, in most cases the press can report that with impunity.

In Canada, if the press reports a confession prior to the conclusion of the trial, that is immediate grounds for a contempt citation. There are numerous--I would say well over two dozen--newspapers in the last 10 years that have been caught by this. And it's not only a confession; it's any matter that might be raised at the trial that wouldn't be proper evidence, such as whether the accused has a previous criminal conviction. That would be ground for a contempt citation also.

This is, of course, based on British precedent and is no different from the rule in Great Britain. In other words, the basic law in Canada is that the right to a fair trial, and the administration of justice, come before the right to freedom of expression. Of course, that right does end at some time. That is when the trial ends. There is some conflict in the cases as to whether it goes on until the conclusion of the appeal. There's also conflict and some opening up of this area in Great Britain. I hope that it would be opened up soon in Canada, in areas where there is simply a judge involved and no jury.

Obscenity

Now we move to the third area, which is the favorite of law students, the law of obscenity.

The Hicklin Rule says that things are obscene when they deprave or corrupt people into whose hands these matters are likely to fall. And these matters always fall into the hands of law students! Students take them in criminal law courses and always find them the most fascinating cases of all.

In the law of obscenity, there is a curious observation to make. In the United States, I think everyone would agree that gradually the intolerant majority is being dragged kicking and screaming by the tolerant minority into a situation where the law of obscenity is almost a subset of the law of nuisance, which is exactly where I think it should be. In Canada, the law of obscenity is still governed by judgments that appear to have been written about 1890.

On the other hand, freedom of expression reflects judicial and usually prosecutorial inaction. An in many major areas, there has been relative inaction in the last few years; accordingly, the grounds of freedom of expression have widened.

Another observation is that the electronic media in Canada allow more of what might be considered offensive and censorable material than the American networks do. For instance, it is not uncommon to see frontal nudity on Canadian television; it's been seen on the CBC in prime time.

For the last two years, a UHF station in Toronto has been running what it likes to call "The Baby Blue Movie" at midnight on Fridays. A large audience swarms up from Buffalo, N. Y., to rent motels in which Channel 79 is available. I don't have the foggiest idea why they want to watch these movies because the movies are the most ridiculous soft-core material. They could be bettered on any walk in downtown Detroit or New York City, but for TV they are somewhat novel. I suppose there is a certain something about watching frontal nudity and moans and groans--after midnight, of course--on TV.

I might add that Channel 79 originated this concept, but it's been picked up by an Ottawa French station. If you happen to have cable and you were here Friday night, you might have watched it. "Cinema Erotique," it's called. Unfortunately, you tend to run out of films; that was why Channel 79 stopped it. You have to pick the type of film run in downtown theaters in a rather slim period in history, i.e., 1966 to about 1971. By then, things really began getting hard-core, and that's a little difficult to run on TV.

These things present interesting problems because the law relating to obscenity on the electronic media has been tougher than the law for print or other forms of expression, which are more readily kept away from children.

On Feb. 19, 1975, the FCC issued its long-awaited report on violent, obscene and indecent material, deciding that up to 9 p.m. we would hope for only family material, and no excessive violence. After 9, presumably anything goes. But in a companion decision relating to the Pacifica station in New York City, the FCC commented on the use of specific indecent words. It gave the impression that those words might be acceptable after 11 p.m. or midnight but certainly not at 2 p.m. In question was a passage from a George Carlin record album titled "The Seven Words You Can't Say on Television." The decision proved for all and sundry that George was right.

I gather Pacifica has appealed that case to the Washington, D.C., Circuit Court of Appeals, so we'll have to see what happens. It's amusing to read the decision because it contains a complete transcript of Mr. Carlin's recording and comments on the specific words. It would be impossible to read this FCC judgment on the air without breaching its own ground rule.

We are moving toward more tolerance, but we all realize that those of us of liberal mind and liberal cast are not the majority at any time in most societies. And freedom of expression is the kind of freedom that comes only from a tradition of freedom.

Even today, I think you probably mention in your own classes studies showing that if you ask the average American on the street whether a law should be passed to prohibit a Communist from stating his views in a public park, two-thirds of Americans will still say, "Of course it should be passed," even though the constitutional protection exists.

Frankly, Canadians are no more tolerant or less tolerant than Americans. We always find that there is a substantial majority of the populace that is less tolerant than the principle of freedom of speech would require. The recent experience in India and in other unfortunate countries makes you realize just how close to the line it can be when a majority is not concerned about protecting these rights and is more interested in other benefits, such as efficiency, or keeping trains running on time and so on.

In Canada, the federal Law Reform Commission, which is of a fairly liberal cast, has taken much the same view as the U.S. presidential commission on obscenity. It has come to the view that obscenity in private should not be a crime, where children are not involved. It will only require some time to see what happens in that area.

Access to Government Information

The next area I'd like to look at is the difficult question of access to government information. The reason I raise this question is that it's of particular interest to the United States in the post-Watergate period, and of immense interest concerning the Freedom of Information Act.

An entertaining question for a lawyer in Canada is: Could Watergate happen here? When I say "Watergate," I embrace the concept of a scandal involving the executive branch of government, with such illegal activities as bugging, corporate break-ins, perjury, obstruction of justice and perhaps secret funds. The question is: Would it be discovered in Canada, and would the responsible persons be removed and punished?

In the United States, although much of the credit for uncovering Watergate is probably claimed by the news media, the real credit is obviously the American judicial system, and the independent power of both the judicial and prosecutorial offices. It culminated in a precedent-setting unanimous decision of the U.S. Supreme Court denying executive privilege in the release of tapes of presidential conversations. Another comment that might be added is that it took a long time for the judicial process to work. It took over two years from the time of the break-in to result in the resignation of the President.

Let's examine what would have happened if this had occurred in Canada.

The horrible fact of the matter is that our courts, if faced with precisely the same issue as the U.S. Supreme Court, would have reached the reverse decision. Our courts would have been weighed in the balance and found wanting. On the other hand, it's interesting to note that the resignation of our responsible politicians would in my view have taken place in less than two months--and that notwithstanding the lack of role of our judicial branch. The difference lies in our parliamentary system, and in our treatment in the law of freedom of expression.

Let's follow the chronology of events, assuming that Watergate happened here. As you know, there was a break-in. In Canada, the day after the break-in, you'd find the opposition standing up in the House of Commons. There would be something--an interesting Canadian and British obsession--called the question period. Anyone can stand up and question. And one doesn't question only the press secretary. He isn't allowed on the floor of the House; only politicians are allowed on the floor. One questions the minister, and in this case the prime minister. Well, we would expect the same kind of answer: "This is just a third-rate burglary, it didn't involve the executive branch at all, we wash our hands of it, that's the end of that."

About a month later, it becomes clear that there were some funds white-washed through a Mexican bank and so on. Throughout this period, there are daily questions in the House on this, and tempers are getting fierce there. In my view, the minister responsible would have had to resign. The reason is that there is a parliamentary tradition in Canada that if any of your answers to questions in the House are demonstrated to be misleading or false, you are obligated to resign.

Now suppose, just for laughs, that only the minister resigns. The government doesn't resign, which is possible. There would, however, have to be a Royal Commission. That's the standard British and Canadian solution. So we have to appoint a Royal Commissioner. We find one, some judge of absolute probity, and he will probably put on his little task force a few people from the RCMP and other groups. Within a few days, we find the Royal Commission in session. Immediately, the Royal Commissioners subpoena all the responsible ministers.

Now in the United States, we have an interesting issue of executive privilege. Can the president be subpoenaed to appear in a judicial inquiry? Well, the answer is probably no. Although, of course, any executive privilege is waived for his staff.

In Canada, you'll be interested to know, there is no executive privilege. The only executive privilege exists for the Queen. The Queen and Governor General are immune from the judicial process, of course, so we couldn't compel them to come to court. But who's interested in the Queen? The Queen is no political power in this country; nobody wants to bribe her unless you wanted her to come down and cut a ribbon for you.

The people you're interested in are those with power, because it's the misuse of power we're talking about. Those people are subject to judicial process in this country. All of them, right up to the prime minister.

So we move along a little later in time and discover the ministers appearing before the Royal Commission. They're asked to produce their documents, diaries, telephone records and possibly any tapes of conversations. It is at this point that we discover that our judicial process breaks down because there is a well-known immunity for documents in the Cabinet. It is, of course, difficult to speculate on exactly what would happen because this does present some unique attributes. In a post-Watergate period, one doesn't know exactly how a court would judge it. But the precedents appear to say that a court would not compel the ministers involved to produce any documentation or tapes whatever.

Now I say the courts could not compel. In other words, if the Commissioner asked for it, and the minister said, "To hell with you," and the Commission then moved for a writ of injunction, and that was appealed all the way up to the Supreme Court of Canada, we discover, I think, that the Supreme Court would say that there is no obligation for the government to come up with these documents. But we all realize what would happen in the parliamentary process in Canada. The minister would resign. And as soon as he resigned, the government would fall, and we would have an election in Canada in six weeks.

So it's an interesting commentary that the judicial process would not work in Canada. We can't count on the judiciary to keep track of government. The only protection we have is a tradition. It's a very well-known tradition, and one that would be very effective in this case, but the law of freedom of expression and the limitations on access to this material by the press are obvious distinctions between Canadian and U.S. practice.

Now I'm prognosticating a bit because all these suggestions are totally hypothetical, but it will be interesting indeed to watch the result of the Crossman case, which is now being examined in the United Kingdom. It also deals with the question of executive privilege relating to Cabinet documents.

Now finally, after briefly examining some crunch issues and comparing Canadian and U.S. practice, I thought I might speculate about a few items that Canada might possibly contribute. These differences I've discussed--although some are more matters of approach than of substance--certainly reflect a basic attitude in the Canadian judicial system which in my view is outdated against the public interest and betrays an enormous lack of sensitivity for the public need to know.

But there are some unique Canadian contributions to the law of freedom of expression. For the most part, they are found in the area of broadcast-licensing policy.

Canadian Broadcast-Licensing Policy

In Canada, the equivalent of the FCC is the CRTC, the Canadian Radio-Television Commission. As Dr. Peers mentioned, this is a body created in 1968 to succeed the Board of Broadcast Governors. Its present chairman is Pierre Juneau.

The interesting aspect of this commission is that there isn't a lawyer on it. That's not unique for Canadian boards, but it's a very important commentary. Not only are there no lawyers on the commission, but very few lawyers ever appear before it.

The commission regularly tries to have hearings in every location in Canada. The hearings are more like town hall meetings. The commissioners sit on a little dais; the public sits in the auditorium. There are local ads in the paper saying, "Do you want to come down and watch the renewal?"

Let me tell you a little about how long these hearings take. You know we always hear horror stories about the FCC and communications lawyers and how long hearings take.

In Canada, most stations have to go through a renewal hearing. That is an incredible fact. When I say "most," I mean, for example, that in the last five years at least 50 per cent of the stations in Canada have had to show up before the commission at a hearing. That's also true of cable TV systems because they are licensed by the commission directly, as opposed to the American system. These hearings don't last long; the longest hearing in commission history was four days. Most items on the agenda last half an hour to an hour each. Questions are asked not by lawyers but by citizens.

The commissioners come from across Canada. Five are full-time members, who sit here in Ottawa and live here. There are ten part-time people--paid just $100 or so a day to show up--who don't have a direct decision-making role; they have what is called a consultative role, which means they sit there and ask any questions they like and act as a sort of conscience of what is going on.

There are interesting results from this process because a basic contribution the commission has made is that it is pro-active rather than reactive. In Canada, communication is a response to the commission. In the last five to six years, most issues in communications have resulted from studies and suggestions made by the commission in its role as regulator.

The second contribution is that the commission does not consider economics to be a determinant of the Canadian broadcasting system. Now that, of course, flies in the face of everything and is straight heresy because it doesn't make sense! But it results from a peculiar obsession of Mr. Juneau and his fellow commissioners with a concept I might call pluralism. It means that communication is nothing if it isn't two-way.

I think you people of all people would be well aware of former Vice President Agnew's comment about the effete Eastern elite running the American media. That was before Agnew pleaded nolo contendre and went off to his beer franchise or whatever it is, but his comment got right down to the bone of a lot of Americans.

In Canada, the equivalent comment would be that our media are controlled by an effete Toronto elite, or in the case of French Canada, a Montreal elite. It's always been a favorite bear-baiting game in Canada that nobody likes Toronto, although the mayor there is now very lovable. And it's been written up in Fortune magazine, so people now think Toronto isn't all that bad.

But the interesting concern of the commission is, as I say, rather heretical. It is that a lot of broadcasting can be done from outside Toronto. It would be as if the FCC said, "You American networks, why do you have to be always one-way communicating? It's either Hollywood to the American people, or it's New York to the American people. Why can't it be Houston to the American people, or Spokane?"

Well in Canada, we try to get a one-network program out of Edmonton, and there are programs that come out of Montreal and Toronto, of course, but also out of Winnipeg and Vancouver. Even Halifax for a while had "Country Hoedown" coming out.

It's an interesting exercise, and of course, destined always to fail. The reason is that people don't want to live in Halifax. The people who are good move to Toronto, and if they are really good, they move to Los Angeles! However, this is the difficulty you see.

It's an incredible optimism that the commission has: that people from Newfoundland have something worthwhile to say, and that amateurs might be worth listening to. It comes from an interest in having a genuine two-way communication, so people talk to each other instead of always listening.

It's a problem I think the United States can learn a lot from.

Another point arises if you examine what happens at international conferences. Countries often say there is no free flow of communication across national borders if each side doesn't have the right to flow back. Of course, it's perfectly sensible to have total free flow if you own all the methods of communication and already have a sufficient sustaining drive. But if you are in a country where most of the cultural expression is provided by another country, you too would be concerned. And not about censoring specific programs. Instead, it's an economic-restructuring question. We're dealing with a dislocation problem. We're dealing with redressing of balance and correcting what would have been a submerging problem.

In that respect, when you think about it, the Canadian content rule is nothing more than a Canadian fairness doctrine. It's our equivalent, if you want, of the kind of restructuring suggested by Jerome Barron in the Harvard Law Review a few years ago. As I say, it also becomes rather ludicrous. The commission has decided that 10 per cent of all gross revenues of cable systems should be devoted to cablecasting. That's an enormous amount of money to go to little people who come in off the street and are never watched. However, it again reflects this interest in giving everybody with something to say a forum.

And in this area of all areas, I think there may be a unique contribution by Canada to the question of freedom of expression--one which to some extent might overwhelm some of the detriments in these other areas.

Certainly in the traditional legal areas, the Canadian law of freedom of expression leaves a lot to be desired. Some of the areas are nothing short of scandalous.

But in this area--in preserving freedom of expression for the little guy, for people out in the sticks--there may be something to be said for the policy. We can only tell by watching it work out in the next few years.

Thank you very much.

FREEDOM, RESPONSIBILITY, PROSPECTS FOR THE FUTURE

BY KEITH DAVEY

Sen. Davey is the author of The Uncertain Mirror, the three-volume 1971 Report of the Special Committee on the Mass Media of the Senate of Canada, which often is termed "the Davey Report." Outspoken and provocative, the Report discusses the performance and profitability of the Canadian mass media, including Canadian media ownership concentration and U.S. influences on the Canadian media. Among its recommendations was withdrawal of the special tax exemptions for the Canadian editions of Time and Reader's Digest. Often highly critical of newspaper performance in monopoly situations, the Report recommended establishment of a Canadian press-ownership review board to represent the public interest in approving or disapproving future mergers, and it recommended establishment of a national press council along the lines of the British Press Council. The Report has been called one of the most important documents ever published on the Canadian media system.

Born in 1926, Davey was educated in Toronto and worked for years on a Toronto radio station. He became active in the Liberal Party and held the position of National Organizer, among other Party posts. He was chairman and organizer of the 1962 campaign which returned Lester Pearson's government to power; he was campaign chairman in 1963, 1965 and 1974 also.

He became a Senator in 1969. Canadian Senators serve to age 75, which means that Davey's term ends in the year 2001. For a short period in 1967, he was commissioner of the Canadian Football League. He resigned after being commissioner for a rather stormy 54-day period; a Montreal Star columnist commented on the resignation by saying that Davey was guilty of thinking the commissioner should be a working man instead of a do-nothing yes-man.

Recognized as an expert on the Canadian mass media system, Sen. Davey has spoken throughout Canada and the United States. He proposed and chaired the Special Senate Committee which issued the 1971 Report.

Prof. John D. Stevens (Department of Journalism at the University of Michigan) of the AEJ Professional Freedom and Responsibility Committee introduced Sen. Davey.

I am delighted to be here for any number of reasons, not the least of which is the opportunity it gives me as a Torontonian to make a speech in Ottawa, away from Parliament Hill, and to tell the only story I know about Ottawa. The story is allegedly true. Maybe some people here from Ottawa could confirm or deny it. Two people met in Toronto; they were talking about Ottawa. One fellow says, "My god, all that ever came out of Ottawa were hockey players and ugly prostitutes." The second fellow leans over and says, "Look, just a minute, my wife comes from Ottawa." The first fellow says, "What position does she play?"

Now it has been mentioned that five years ago I proposed and then chaired a special Senate Committee on Mass Media. In speaking about that Report today, I apologize in advance to the Canadians here because most of them have heard me speak about it at other times and other places. Hopefully, however, they will agree with me that today, five years after the publication of the Report, it still stands up extremely well.

I've spoken so often about the Report in Canada, and indeed in the United States on a number of occasions, that I've learned to summarize our basic posture in very few words indeed.

Our concerns were 1)for media voices, 2)for better media voices, and 3)a very real concern about Canadian cultural survival. I want to speak about each of these concerns.

Perhaps I could introduce the Report by quoting very briefly from its introduction. We said: "It seems to us that there has never been a period in the nation's history when the press has been so distrusted, so disrespected, so disbelieved." We also said: "If the media turn people off, it is because society at large turns them off. If newspapers are losing friends, it is part of the same process by which Parliament is losing friends, and the courts, and the corporations, and the schools and the churches."

Now you'll know when I'm going to conclude my remarks because I would like to return to that quotation and just read for you briefly the next sentence.

Paradoxically, the sociologist we commissioned to interview 2,500 Canadians from coast to coast found that most people in this country were in fact or seemed to be pleased with media generally and with newspapers in particular.

But that same sociologist found a number of interesting facts. First, the overwhelming majority of Canadians have television as their first source of finding out what is happening in the world. Isn't that a mind-boggling thought? The overwhelming majority of Canadians would have opted for--indeed would have accepted--some form of government censorship of the mass media, a concept that, I need hardly say, we rejected out of hand. But that was the sociologist's study going into the Report. It all reminds me of that marvelous H.L. Mencken quotation: "The national appetite for bogus revelation should not be underestimated." Amen.

I'm grateful to say that the Report was well-received and well-read. The newspaper publishers tended to fasten onto some of the more controversial sections of the Report; let me give you a sample. This wasn't intended as a box score of the Canadian newspapers, but it was so taken by the publishers.

We said: "Some newspapers dig, some newspapers are a constant embarrassment to the powerful, some manage to be entertaining, provocative and fair at the same time. There are few such newspapers in Canada. The Vancouver Sun, the three Toronto dailies, the Montreal Star, the Windsor Star, La Presse, the Edmonton Journal and a handful of others. There should be more.

"There are also newspapers, which despite occasional lapses into excellence, manage to achieve a consistent level of mediocrity. The Montreal Gazette and the dailies in Ottawa, Winnipeg and Calgary fit into this category.

"There is a third kind of newspaper in Canada, the kind that prints news releases intact, that seldom extends its journalistic enterprise beyond coverage of the local trout festival, that hasn't annoyed anyone important in years. Their city rooms are refuges for the frustrated and the disillusioned, and their editorial pages are a daily testimony to the notion that Chamber of Commerce boosterism is an adequate substitute for community service.

"It is our sad impression that a great many, if not most, Canadian newspapers fall into this classification. Interestingly enough, among them are some of the most profitable newspapers in the country. A number of these newspapers are owned by Casey Irving; a much larger number by Roy Thomson. And some of them, unhappily, are owned by respected residents of the communities they profess to serve. In general, you can say that the best of them are published in big cities, the worst in small ones. But there are plenty of exceptions. Halifax, Canada's twelfth-largest city, is served by daily newspapers which are either mediocre or dreadful depending on the rigor of your standards."

The response of the publishers was curious. The day after the Report was published, the Montreal Star chose to carry on its front page, in a little box, the fact that we had said the Montreal Gazette was a mediocre newspaper. The Vancouver Sun came out the next day with a headline which said "Press Probe (Blush) Likes the Sun." The kicker to the headline was "Aw Shucks, Senator Davey." I defy anybody to read that Report and see anywhere in there that we liked the Sun.

My favorite was the Halifax Chronicle-Herald, which even two days after the Report was published hadn't regained its equilibrium. It had this marvelous set of pictures of me with Spiro Agnew and Martha Mitchell. The headline was "Megalomania Incipient."

Now before going further, I must confess considerable inhibition as a mere politician standing before an assembly of academics. I accepted the invitation, quite frankly, because I have been so delighted over the years by the unexpected reception which our Report received in Canadian academic circles. The Uncertain Mirror and its two sister research volumes serve as textbooks in many Canadian universities and community colleges. Indeed, I had the experience of speaking to journalism and communications classes from Memorial University in Newfoundland to the University of British Columbia, and there to be confronted by students who now are studying the Report, as recently as last year. They know a great deal more about its contents than I do. The tenth anniversary issue of the Columbia Journalism Review carried a 500-word excerpt of the Report and described it in its editorial as deft and authoritative. Indeed, it was my privilege to speak at the Columbia School of Journalism on the Report.

Let me turn now to the concerns we had: more voices, better voices and Canadian cultural survival.

More Voices

It is a disagreeable fact of life that in excess of 90 per cent of Canadian daily newspapers are now involved in some form or other of common or group or chain or concentrated ownership. There are three big chains in Canada. In our Report, we were extremely critical of most Thomson Newspapers. The second big chain, the Southam papers, has some newspapers which are pretty good, indeed outstanding. The third big chain, F.P., has papers which range from competent to excellent.

I should make it clear that I do not believe that most newspaper owners and managers of the mass media in Canada lack a sense of responsibility or lack tolerance for a diversity of views. I do not believe there is a small group of men who meet for breakfast every morning and decide what it is they will make the Canadian people believe on that particular day. I think emotion often outruns the evidence of those who argue a conspiracy theory of propagandist manipulation of the masses.

On the other hand, one reason evidence is so hard to come by is that the media tend to give less publicity to their own abuses than to those of other institutional power centers, for example the medical profession. The media operate as a check upon other institutional power centers in our country; there is, however, no check upon the media.

In our Report, as far as the concentrated press was concerned, we made one central recommendation. We urged the government to establish a press-ownership review board, with powers to approve or disapprove mergers between or acquisitions of newspapers and periodicals. The board would have one basic guideline: all transactions that increased concentration of ownership in the mass media are undesirable and contrary to the public interest unless shown to be otherwise. The government proceeded to do exactly nothing about that particular recommendation, and now the degree of press concentration in this country probably makes the implementation of the recommendation almost meaningless.

A. J. Liebling once wrote, "Diversity and the competition it causes does not insure good news coverage or a fair champion for every point of view, but it increases the chances." And I say amen to that.

I am aware that I am speaking to an audience comprised substantially of Americans. Therefore I would like to put before you a quotation about U.S. newspapers from America Inc., Mintz and Cohen, Dial Press, 1971, page 96: "An important measure of media concentration is the proportion of cities and towns with daily newspapers under two or more separate ownerships. In 1910, the figure was 57.1 per cent. In 1930, it was 21.5 per cent. In 1970, it had dropped to 4.13 per cent. Today there are 1,483 cities with monopoly ownerships compared with 64 competing ownerships. Whether a city has a single or multiple newspaper ownership, one or all of the proprietors may be Newhouse, Scripps-Howard, the Hearst Corporation or other of the newspaper chains."

Senator McIntyre, the New Hampshire Democrat, has pointed out that these chains have achieved startling growth. In 1960, they controlled 560 dailies. In each of the seven succeeding years, chains acquired an average of 40 more. As of 1967, they controlled 871, an increase of 56 per cent over 1960.

The 871 dailies were 49.3 per cent of the nation's total. They accounted for 61.8 per cent of the aggregate circulation and for 19 of the 25 largest newspapers. Well, I'll leave you people to worry about the American problem. I'm certainly concerned about the problem here in Canada.

One other reference to the United States was contained in the introduction to our Report, where we said, and I quote: "Newspaper publishers, in particular, repeatedly told the committee that they sought no special favors from government." We believe them. Certainly none are required, and yet in the United States, with an equally flourishing press, Congress passed the Newspaper Preservation Act, which to all intents and purposes legitimizes and extends press concentration. Its easy passage through both houses of Congress has been popularly attributed, in part, to the fact that politicians looking to reelection must depend substantially upon the mass media in the very real world of practical politics.

As I'm sure you will appreciate, I could use my entire time to talk about the problem of press concentration. Instead, I want to touch briefly on the question of the quest for better media voices.

Better Voices

Early in our study, we had a difficult decision to make. What on earth is a good newspaper? What's a good radio station? What's a good TV station? Publishers and broadcast owners who came before our committee--and they were practically all there--said, "Look, it's enough if we report accurately all the events which transpired in the previous 24 hours." But we took the position that by 1970, and I take the position especially by 1975, that that kind of criteria is a rock-bottom minimal requirement.

We shouldn't measure excellence against such a minimal requirement. We thought there was something more. We decided that the standard, which was really straightforward, should be: how successful is that newspaper or broadcasting station in preparing its audience for social change?

Now to insist that this is the media's main job is not to suggest any built-in bias for or against anyone's notion of progress. Change need not be feared if it is understood. But if day after day we are assaulted with news of violent events which we have not anticipated, or because of factors that have not been explained, we can hardly expect to avoid the feeling that events chase each other across our lives without rhyme or reason. And are so far beyond our ability to affect or control that we might just as well lapse into apathy or seek change of authority through violence.

We made a series of recommendations in this quest for better media voices which by and large was ignored by publishers and others. We did speak about freedom of the press. (I should put on your record that in my opinion freedom of the press must be accompanied by responsibility of the press--the press being the first source of responsibility, and the public the second source.) Now some argue that if press and public cannot make newspapers perform as they should, then government should intervene to make sure that the press behaves responsibly. The glaring weakness in that theory, however, is that government is invoked as the guarantor of freedom. Responsibility must come from within, and not be imposed from outside.

In the Report, we dealt at some length with the myth of media poverty. Owner after owner said, "We would like to do so much more, but we haven't got the resources." Well, one thing was clear from our study--and I'm sure this is true in the United States--that newspapers, collectively and on the average, have the profitability to do a much better job for us all. Canada's 116 dailies reaped, after taxes, profits ranging from 12.3 per cent to 17.5 per cent annually on their owner's investment in the decade from 1958 to 1967. The newspaper's average return of 17.5 per cent on invested capital in 1965 compared with 10.4 per cent for manufacturing firms and 9.2 per cent for retailers.

In traditional usage, you have a monopoly ripoff when the corporations concerned use their privileged position to charge their customers more than the traffic would otherwise bear. In the case of the media, the problem is reversed. It's not that the companies are charging too much, but that they are spending too little.

Canada's newspapers, by and large, aspire to quality. Where they differ is in performance. If there's a distinction to be made in this respect, it lies in the extent to which commercial considerations affect editorial excellence. A newspaper is a business; it must pay or perish. The desire to make money and the desire to make a good newspaper are not mutually exclusive, but some publishers are unable, and some are unwilling, to give excellence an equal priority with profit.

I found an interesting footnote on our concerns about better media voices in an article in Fortune magazine in April 1975 titled "The New Concerns About the Press." There wasn't a byline on the article, but it said: "The problem about conventional newspaper news was that it was limited to daily events. Focusing exclusively on events also meant that long-term trends, such as the massive migration of Southern blacks to the North during the 1950's, were systematically ignored. For the same reason, stable conditions, the situation of the poor, discrimination against the minorities, were almost never written about because nothing happened." That's the end of the quote, and I can only say, "Exactly."

The article goes on to say that it is impossible to pin down the precise point when the criticisms of conventional journalism were accepted by and acted on by editorial executives of the national newspapers. But during the 1960's it seems clear that the ideas of the critics ceased to be viewed as heresy. Indeed, they rapidly became something akin to the new orthodoxy. The result of all this development was dramatic. The press, or at least a large chunk of it, was no longer the routine recorder of events, a passive instrument of institutions; it had become much more influenced by ideas, and more capable of communicating ideas. Even more important, the national press conveyed a new consciousness of the American condition. Reacting against the dominance of established institutions and traditional reporting, it became increasingly preoccupied with the nonestablishment and anti-establishment worlds, with the poor, the aged and the blacks.

Now you won't be surprised that the article goes on to suggest that there are quarrels with this new state of affairs. For example, the business community is somewhat unhappy and seems unable to communicate well through the newspapers. It's a most interesting article; I commend it to you.

Now I want to turn to the other matter which concerns us: a very real concern we've had for Canadian cultural survival. And if the Canadians will allow it, I would like to address myself almost exclusively to the Americans in the audience. I'm frank to admit that some of my best friends are Americans!

Canadian Cultural Survival

I watch Johnny Carson every night. For years now, I've lived and died with the New York Yankees. As a matter of fact, I was in Shea Stadium three weeks ago when this year's interment took place, when Catfish lost a three-hitter and the Red Sox had a double shutout--that was the end of the Yankees.

I'm fascinated by the American political process, which I read about endlessly. I lug the New York Sunday Times home from the drugstore every Sunday about one o'clock. I subscribe to Harper's, Esquire, New York, the Atlantic Monthly.

But damn it all, in spite of all these things I'm a Canadian, and I want to remain a Canadian.

Now Canadian cultural survival is uniquely a Canadian problem. There are only 22 million of us Canadians. We reside in a vast empty expanse of land which covers nearly 4 million square miles. After Russia and China, Canada is the third largest nation in the world, larger even than the United States, whose population is more than ten times ours. And that, of course, is where our problems begin: 22 million of us, strung out like a 3,000-mile necklace, smack up against 230 million Americans who collectively comprise the most powerful nation in the history of the world.

No two countries in the world have so much in common. And not just that long border. We share substantially the same language. We serve substantially the same heritage. Just as clearly, our destiny is on this continent, in the diversity of this hemisphere. We share with the United States the democratic principles which sprang from the very heart of British democracy. We admire, in Americans, an open society unafraid to display its conflicts, sorrows, joys in such a way as no other nation in the world has ever dared. And obviously Watergate is a case in point.

Still, there are some fairly profound differences. The United States is a melting pot. We are trying to be a mosaic. In Canada, we have two founding nationalities, one-third English, one-third French. The other third, the so-called new Canadians, comes from other backgrounds, mostly European.

It is a matter of conscious national policy that we try to sustain these various ethnic entities, to perpetuate these various cultural backgrounds, while at the same time seeking to build some national consensus.

It's a very tough thing. And sometimes it doesn't work, but I think increasingly it does. It must, because if we can't work this kind of a thing out here in Canada, what chance is there for any lasting world peace?

We know that Americans are our best friends in the world. I'm reminded of an almost-defunct fourth political party here, the Social Credit Party, which was headed at one point by a lay preacher, whose name was Robert Thompson. I've never forgotten. It was the night of the Cuban missile crisis. The House assembled in a hushed atmosphere, and the prime minister spoke. Then it was Thompson's turn to speak. He didn't mean to be funny, but he was. He said, "Let's face it, the Americans are our best friends, whether we like it or not."

Understandably, our relationship with you is far more important to us than any concern you have felt about Canada. I would expect that most Americans here had never thought much about American-Canadian relations until this week. We think about those relations frequently; we must if we are going to survive. Not that Americans don't want Canada to survive, they simply and understandably don't really think at all about Canada.

Prime Minister Trudeau once said it all, and very well: "Living beside the United States is like sleeping with an elephant. It's fine as long as the elephant doesn't roll over."

There are two dimensions to our problems: economics and culture. I do not intend to talk about the economic dimension beyond putting before you very succinctly the scope of the problem. In the quotation I am going to use, you will hear the phrase "nonresident," but for "non-resident" please read "American."

"In 1967, 60 per cent of the assets in the mining industry belonged to corporations which were nonresident-owned. In mineral mining 42 per cent, in mineral fuels which include gas and oil, almost 82 per cent. In manufacturing, nonresident-dominated firms owned more than 60 per cent with higher proportions in some sectors: 90 per cent in aircraft parts, 80 per cent in the chemical industry."

All this reflects in part the fact that past Canadian governments have not looked upon foreign ownership and control as a general problem requiring a comprehensive policy response. Happily, I think I can say, however, that it has become a matter of national public policy, and I think the stage has been set. Indeed, there have been some preliminary government actions; hopefully, there will be more.

It's cultural survival I want to talk about, and I would like to put the American-Canadian relationship in the best perspective I have seen from the vantage point of those of us concerned about the media. The quotation I have is from our Report: in modesty, it is my favorite.

"Geography, language and perhaps a failure of confidence and imagination have made us into a cultural as well as an economic satellite of the United States. Nowhere is this trend more pronounced than in media. Marquis Childs on the editorial page, Little Orphan Annie back near the classified ads, Nixon and Tiny Tim and Jerry Rubin and Johnny Carson and Lawrence Welk and Timothy Leary on the tube. The Beach Boys and Blind Faith and Simon and Garfunkel on the radio. The latest V. C. body counts courtesy of A.P. and U.P.I. The self image of an entire generation is shaped by Peter Fonda riding his Stars and Stripes motorcycle. Need we continue?

"We are not suggesting that these influences are undesirable, nor that they can and should be restricted. The United States happens to be the most important, most interesting country on earth. The vigor and diversity of its popular culture, which is close to becoming a world culture, obsesses, alarms and amuses not just Canadians but half the people of the world. What we are suggesting is that the Canadian media, especially broadcasting, have an interest in and an obligation to promote our apartness from the American reality. For all our similarities, for all our sharing, for all our friendships, we are somebody else. Our national purpose enunciated in the British-North America Act is peace, order and good government, a becomingly modest ideal that is beginning to look more and more attractive. Their purpose is the pursuit of happiness, a psychic steeplechase that has been known to lead to insanity."

The problem of Canadian cultural survival runs the gamut from professional sports to our struggling book-publishing industry. From our almost total dependence for international news coverage on American wire services to our fledgling film industry. I'll be prepared to talk about any of these in the question period.

Broadcasting, rather than being a case in point, however, is an illustration of what can be done with leadership. The leadership has come from Pierre Juneau, chairman of the Canadian Radio-Television Commission, our version of the F.C.C. Now I know there was a long discussion of broadcasting here this morning. Perhaps I can move very quickly over the comments that I had intended to make about broadcasting.

Ownership, for openers. Almost $150 million in foreign broadcasting cable holdings has been repatriated over the past five years. As far as content is concerned, Pierre Juneau has said, "Canadian talent today is a minority in North America; it can only be a minority in the world. Can Canadians accept to be a minority in their own country?" He has answered resoundingly "No."

I know you've heard about the Canadian content regulations on radio and TV. I remember that the Senate committee was meeting when Juneau was proposing these regulations. The private broadcasters--the radio people in particular--were really upset. As we said in the Report, they were nice people collectively, but by group interaction they descended to a level that was best described as Neanderthal. You could almost imagine them taking their wagons out on the front lawn of the Parliament buildings and putting them in a big circle. And they said, "This is the end of the world; there's no Canadian music industry!" Well, what has happened in the course of five years is that there are more people listening to private radio than ever before: more audiences, higher ratings, more advertising. In the process, we have developed a multimillion-dollar music industry.

In a moment, I am going to talk about the problems of the Canadian magazine industry. Briefly, I want to point out that there is an accompanying problem in broadcasting. That is the overflow advertising from the conventional American broadcasters onto the Canadian market.

Canadian advertisers are taking advantage of the signal coming back into Canada. Canadian broadcasters, particularly in TV, are also faced with competition from across the border. In some fairly notorious cases, the competition comes from stations deliberately created to live off Canadian advertising and not designed to provide any service to the United States.

There is also substantial penetration of the Hamilton-Toronto area by three commercial Buffalo stations--WGR, WBM and WKBW. There is before Parliament now legislation which will end this form of ripoff.

More recently, the Canadian Radio-Television Commission (CRTC) has announced that all the performance components of advertising messages on radio must be produced in Canada after Oct. 1, 1975. There is a similar regulation for TV requiring percentages of 70 per cent in 1976, 75 per cent in 1977 and 80 per cent in 1978.

Cable, of course, is a special problem, one that is not yet solved. The CRTC warned of results of too-rapid extension of cable as early as 1969. The problem of cable's eroding the audiences for local Canadian services was already visible then, with more than 300 cable companies in operation. The CRTC termed its 1971 cable policy approach as a deal to permit further cable expansion in certain conditions: program substitution, commercial deletion, attention to particular situations, compensation for audience loss and mobilization of Canadian programming resources. Still, cable growth was unrestrained. By the end of this year, 82 per cent of Canadians will be within reach of a cable system, and more than two-thirds of those people will take advantage of the cable system. Let's be clear on why they are so taking advantage.

The most important reason--the only reason--is the access through cable of American programming. And most frequently, I regret to say, it is American lowest-common-denominator programming.

More recently, Mr. Juneau said in a speech in Quebec City: "In some communities like Thunder Bay. . . Canadian audiences have decreased by over 20 per cent. In Vancouver, American channels had more than 50 per cent of all viewing as early as 1970. Averaged nationally, the audience loss is 6 per cent. If this loss is directly related to advertising revenue, it can be mathematically calculated at a loss of $11 million per year for Canadian stations. While this appears small, it represents almost twice what the CTV network /that's the private TV network in this country/ can afford to spend annually on the purchase of Canadian content programming."

The full impact of cable has yet to come. Many centers, like Edmonton, Calgary, Halifax, St. John's, have been licensed relatively recently. Others, like Sudbury, Timmins or Moncton, have just been licensed and are not yet receiving service. Finally, some areas like Winnipeg, North Bay or Ottawa will inevitably witness an increase in the impact of American signals, if and when they are delivered by microwave. Overall, average audience loss to Canadian stations could therefore rise to 20 per cent. CTV recently estimated that markets like Calgary and Edmonton could follow Vancouver and lose an additional 20 to 30 per cent. And in spite of these facts, many people are still proposing a great variety of schemes to make sure that as many Canadians as possible get three American stations as quickly as possible. Arguments are even made for the endless social benefits accruing to the public when the whole country is wired. Surely such a wired nation, certainly Canada as a wired nation, would be at best a mirage, and at worst a nightmare.

In the face of this reality, compensation to Canadian broadcasters for audience loss is a distinct possibility if the Canadian broadcasting system is to survive. There might be no other way to rebalance the logic of the Canadian system and achieve anything near the stated goals of more than 40 years of Canadian broadcasting policy.

I had a lot of other things I wanted to say about broadcasting, but I realize that time is limited, and I would like to say a word about the magazine industry. There is not a Canadian in the room who wishes me to make a full speech here without some reference to Henry Luce and DeWitt Wallace, those two benevolent forefathers of Canadian cultural economy.

I shall be mercifully brief on the matter because I understand there is a panel this afternoon dealing with this.

Canadian Magazine Industry

In the Senate committee Report, we recommended--and the government has finally decided--to end special tax privileges for Time and Reader's Digest, by expressing the government's intentions to amend Section 19 of the Income Tax Act by deleting from it Subsections 2 and 4.

Now the effect of these sections, as they stand, is to accord to certain foreign magazines, of which the most important are Time and Reader's Digest, advantages in advertising which are otherwise reserved to Canadian magazines and denied to all other foreign magazines. In calculating income tax, Canadian firms advertising in Canadian magazines are allowed to deduct the cost of those advertisements at 100 per cent. Under the present law, they can do the same with the cost of their advertisements in Time and Reader's Digest, which are, in fact, foreign magazines.

I honestly believe that this legislation will be as important as were the CRTC regulations on Canadian content. Perhaps more so, because in a country in which a national press just isn't an economic possibility, it seems that magazines are extremely important in giving us some sense of ourselves. The legislation will work. It will save and indeed develop a Canadian magazine industry.

It already has worked. In 1964, comparable legislation was implemented affecting the business press. The American business press giants were poised to move out of the Canadian market. They purchased land, I understand, in the Toronto area. The rebuff worked, and we now have a very acceptable, successful and highly profitable Canadian business press industry.

There is no doubt that we have the talent in this country. The chief beneficiary immediately will be the Maclean-Hunter Corporation of Toronto, which is a media giant. It will be starting its own news magazine on Oct. 6. But to my own certain knowledge, there are at least eight other magazines ready to start at the first of the year.

The legislation will be enacted by Parliament, and we are presently in adjournment. It will be enacted in spite of a remarkable lobby. One of the most depressing components has been the participation in that lobby of the Association of Canadian Advertisers and the Institute of Canadian Advertising. It's depressing for these reasons. Each of these organizations is alarmingly multinational, i.e. American, in its composition. And each has assured the people of Canada and anybody who will listen that Canadian magazines will not be the chief beneficiary of any newly available revenue if Time and Reader's Digest lose their Canadian editions.

Thus these entities have predetermined and assured us all that the Canadian magazine industry, given the opportunity, will fall flat on its face.

I reject that particular proposition out of hand, especially since these same people--the Association of Canadian Advertisers and the Institute of Canadian Advertising (the association of advertising agencies)--came before our Senate committee and said exactly the same things in exactly the same way about the Canadian content regulation for TV and radio. And I've already spoken about how successful that venture has been.

Incidentally, so what if not all the revenue from the Canadian editions of Time and Reader's Digest doesn't go into Canadian magazines? So what if some of it goes into broadcasting? So what if some of it goes into daily newspapers? And so what if some of it doesn't go into advertising at all?

The sky won't fall. The world won't end.

It should be noted that Time and Reader's Digest will still be available in Canada after this legislation is passed. But they will be coming into this country for exactly what they are, American magazines. Coming in here on the same basis as Playboy, Esquire, Harper's, Atlantic, Ladies Home Journal and so on.

Foreign publications of every stripe and nationality may circulate in Canada, providing they do not carry Canadian advertising. There are no tariff barriers or covert hindrances to the flow of information, ideas and even pure propaganda into the country. If the Canadian edition of Time were eliminated, the parent edition of Time would circulate freely in Canada on the same footing as any other publication.

I suppose that's the way it has to be, but I would be dishonest with this audience if I did not mention another problem of staggering dimensions. I don't know how we can handle this one.

It's the massive overflow of circulation of American magazines competing with Canadian magazines for readers' time and money. Its dimensions are seldom appreciated by Canadians.

At the time of Senate committee, Canadians bought 130 million American magazines and only 34 million Canadian magazines, a ratio of about 4 to 1.

This next statistic is rather funny, but not when you really think about it. Canadians spend more money purchasing Playboy than they do the 17 largest Canadian consumer magazines put together. We've spent twice as much money on True Story as on Saturday Night, a Canadian magazine of affairs. And we are the beneficiaries in this country of more than 100 million American comic books each year.

This is a difficult problem, and one I'm not going to deal with now because I support--utterly, completely and totally--the concept of a free flow of information across the border. Perhaps we will have to look at new distribution legislation, special taxes or postal surcharges. I don't know what the answer is, but it's a problem we're going to have to deal with sooner or later.

The audience has been very patient. I want to conclude. I've been talking about a Report crammed with suggestions for overhauling the mass media structure.

I regret to say that in Canada today, and I suggest it's equally true in your country, that we have the press we deserve, not to say the press we need. And yet as a reformer, I remain optimistic. Not, God knows, because of the people of our country, or I suspect the people of yours, who continue to wallow in that apathy which so predominates the soggy center of the political spectrum. Nor because of the owners, too many of whom are still at the back of the cave waving buggy whips. And not, I regret to say, because of the working press. Because it seems to me that even the American Newspaper Guild has become obsessed with the lunch bucket to almost total exclusion of any concern about ethics, standards or professionalism.

No, it seems to me that the beginning of media reform will be at hand only when journalism qualifies as a profession.

In the Report, speaking on professionalism, we said: "The basis of professionalism surely is that there are some things a professional will not do, and other things he must do. The recognition and definition of these standards and the definition of the practitioners to whom they apply is what separates accountants, teachers, physicians and lawyers from steam fitters, plumbers, garage mechanics, TV repairmen and journalists. As a matter of fact, steam fitters, plumbers, etc., have all taken a more professional approach to their trade than journalists have. They at least insist on minimum standards of training. Apart from the two cases we've described, there appear to be no other instances where journalists as a group assume a collective responsibility for the quality of their product as, for instance, the medical profession takes responsibility for the quality of medical care. We don't think the journalistic environment is going to change very much unless and until journalists start assuming or demanding such responsibility."

Hopefully, ladies and gentlemen, that is where the delegates to this convention enter the picture.

Is it hopefully naive to suggest that the people in this room have an obligation to keep the professionalization aspect in journalism education? Curricula should always be designed to train students for positions on mass media, and to educate about the mass media of the United States and the world. Courses should be molded after the needs of mass media. They should be designed and operated by those with an interest in upgrading the journalistic profession, and not only by behavioral scientists and academic researchers dedicated only to satisfying empirical theories.

Well, I suppose once a politician, always a politician. I've told many people that speakers should always end on an inspirational note. I'd like to conclude that I have a dandy quote. Unhappily, I've got to stop using it. It's one by, I thought, President Kennedy: "The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood; who knows the great enthusiasms, the great devotions; who spends himself on a worthy cause; who, at the best, knows in the end the triumph of high achievement; and if he fails, at least fails while daring greatly. . . ."

Now I usually do it quite dramatically, but I've abandoned it. I used it at a Guild convention in Boston. I was on a panel with Teddy Kennedy; he seemed pleased. A professor of journalism from St. Louis came to me and said, "Look, Kennedy didn't say that at all. He lifted it from Theodore Roosevelt."

Well, I thought if the audience didn't care, and Teddy didn't care, I'd continue to use it. And I did, until one never-to-be-forgotten evening last July or August. I was watching TV, and there was President Nixon. He had assembled a household staff, and he said, "As old TR used to say," and then he came up with my quotation!

So my inspirational close shall be twofold. John Kenneth Galbraith, the Canadian-born Harvard economist, has said that while his former countrymen talk about economic autonomy they might be advised to be much more concerned about maintaining a cultural integrity of the broadcasting system, with making sure that Canada has an active, independent theatre, and book publishing, newspaper and magazine industries, and schools of poets and painters. These, in Galbraith's opinion, are the things that count.

Finally I turn to the Senate committee Report that I said I would read the next sentence from. We said: "If the media turn people off, it's because society at large turns them off. If newspapers are losing friends, it's part of the same process by which Parliament is losing friends, the courts, corporations, the schools, the churches." And then, the next sentence, and my final words:

"We hesitate to wade too deeply into the swamps of sociology and McLuhanism, but it does seem clear that all the conflicts, the hassle, the demonstrations, the social anguish which currently surround us have at least one common characteristic. They're all concerned with people vs. institutions."

Thank you.

QUESTION-ANSWER SESSION

The three Canadian speakers--Prof. Peers, Mr. Grant and Sen. Davey--were joined by two prominent journalism-mass communications professors at U.S. universities for this final portion of the plenary sessions.

Dr. Donald M. Gillmor (University of Minnesota School of Journalism and Mass Communication), 1974-75 head of the AEJ Law Division, moderated the question-answer session. Dr. Harold N. Nelson (former director of the University of Wisconsin School of Journalism and Mass Communication) was a panelist.

Profs. Gillmor and Nelson are widely recognized as authorities on mass communication law. They are the first authors of two of the most widely used textbooks in the field--Mass Communication Law by Gillmor and Jerome A. Barron, and Law of Mass Communications by Nelson and Dwight L. Teeter--and numerous other scholarly publications. Prof. Nelson was AEJ president in 1967. Prof. Gillmor, who has taught at Minnesota for a number of years, is a Canadian citizen.

Prof. Gillmor: Sen. Davey, you were as interesting and as provocative as your Report, The Uncertain Mirror. You must know that we use it in classes in the United States, as well as in Canada.

I will make just a few comments which might help suggest questions from the audience. I would be interested in hearing about how our panelists feel about what seems to be the preference in Canadian judicial circles for individual reputation over the public interest in freedom of speech and press. This seems to be the case. I'm referring to a 1974 book very critical of the Canadian Supreme Court titled In the Last Resort. In referring to a 1969 opinion, Justice Cartwright suggests that the public interest and freedom of speech and press must take second place to minimizing the risk of sullying an individual's reputation. This is said in the context of public figures and public officials. Now we have turned that proposition around in the United States since 1964. I'd like to know how our panelists feel about this weighing of values.

I would like to hear more from Prof. Peers on what might be applicable to our recent experience with the Corporation for Public Broadcasting. Also, we are aware of dramatic parallels between the 1947 Hutchins Commission Report and the Davey Report; I'd like to know more about where Sen. Davey thinks we ought to go next, particularly in regard to our horrendous problems of ownership concentration. And I'd like to ask Peter Grant what happens in a Watergate-kind of situation in a parliamentary structure if the party leader is able to keep its troops in line. I'm sure that's what Indira Gandhi has been able to do in that parliamentary system.

Without saying anything more, I'd like to give my colleague Harold Nelson the opportunity to raise a question or two.

Prof. Nelson: A question to Sen. Davey and Prof. Peers that goes to this matter of concentration of media ownership and performance. In the United States, we have horrendous story after horrendous story of what happens with great concentration, and we can stay awake nights worrying about this perhaps as much as Canadians can. Yet we have no good, deep study, no real solid research, that goes to performance before concentration and performance after concentration. We do have a few studies that have done some of this. Now if we take Sen. Davey's criterion that the press should prepare people for social change, has there been a study of relative competition? And if Prof. Peers can contribute to this from an historical perspective, I'd like to hear from him too.

Sen. Davey: I've spoken at such length that I hesitate to say anything more, but I'll make two short comments. In Canada, it's too late for a press ownership review board, but it's not too late to examine very thoroughly the prospect of dismantling the chains. I think that's a realistic possibility. I've spoken of that at other times. When it's possible to make IBM unbundle, why isn't it possible to make the newspaper chains unbundle? The only other comment is that there is absolutely no corollary between excellence and concentration. For example, one of the better newspapers in Canada is the London Free Press. In that city of about 200,000, there is total concentration. One guy owns the radio station, newspaper and TV station. There are a couple of incidental private radio stations which are not very important. But it's a pretty good newspaper. But surely the residents of that community shouldn't be dependent on the benevolence of an entrepreneur.

Prof. Peers: May I add something as far as broadcasting is concerned? It doesn't seem to me that a multiplicity of licensees is the same thing as a multiplicity of voices, or even multiple choices, for the listener and viewer. It often seems to me that the more licenses there are in the community, the more the tendency is for the stations to imitate one another in perhaps one or two or three ways of maximizing audience and attempting to make money. A better guarantee is for someone to examine the relationships between patterns of program service that are offered. This can be done more effectively, it seems to me, if the number of channels, in radio or TV, is really manageable, than if the guiding principle is that you give licenses to all comers so long as the technical requirements are met. Now I belong to a Department of Political Economy which includes both political scientists and economists. Most of our economists, I would judge, would not agree with me on this because they have been trained to expect that competition would be the best guarantor of service. I would say that in the history of broadcasting I don't think this has been proven. I think that in a country like Canada we really can't afford striving for excellence in this manner, which on the whole seems to have been the rule in the United States.

Mr. Grant: I might add one comment. The Canadian Radio and Television Commission last Jan. 19 announced a new policy with regard to FM licensing which attempts to do what Prof. Peers was suggesting. The basic principle the commission announced doesn't sound all that revolutionary until you try to put it in practice, and the commission had already been putting it in practice in a general way. The policy for licensing new radio stations in Canada since about 1968 is that the commission would not license a station to duplicate a signal or program pattern within a market. This has nothing to do with technical facilities. It deals solely with the programming suggested. Therefore anybody who wants to get a new license has to suggest a programming format not now being offered in the market. This year the commission suggested to FM stations an even more severe thing, which has been implemented in regulations which come into force Sept. 6, 1976. Basically, all Canadian FM stations will be going through renewal hearings starting in December of this year. Every FM station will have to submit a programming format. The format splits all radio programming into about 70 different categories, of which on the program form itself about 19 have to be identified. A typical format would be 80 per cent music, 20 per cent talk. The music is broken into about 11 subcategories --rock, classical, operetta, country and western, etc.--all of which now have legal definitions. When a station suggests that it will program 40 per cent country and western, 50 per cent general pop, 8 per cent jazz and so on, it also commits itself, as a condition of its license, to maintain this format. It cannot change the format substantially without first getting approval of the commission.

Assume that two people come forward and want to have a Top 40 format, which is category 65, which is "contemporary." Under the circumstances, the commission has announced that it will not license two stations in the market to be limited-play-list Top 40. Whichever station promises the best overall performance will get that format; the other station will have to change its format within two years or go off the air. That means that in a market where you have two or three stations, all will be different. In a market where you have 12 stations, it's impossible to avoid some overlap, but they will still be different to some extent. Now to be perfectly honest, this creates enormous problems, and some inhibition of freedom of expression, because it freezes formats to some extent. And so there are a couple of built-in treatments in the policy to deal with that. But the basic intent is to require that all radio stations not duplicate each other. It will be interesting to see whether it works.

Question to Sen. Davey: I'd like to suggest another source for that inspirational quote; you can find it in Dante's Inferno. Secondly, I'd like you to comment on a quote by an American judge who pointed out that the power to tax is the power to destroy. Is your taxation of advertising designed to restrict the free flow of information? And if your taxation policies are not successful in maintaining or increasing Canadian program production, particularly for TV, would you favor jamming American over-the-air broadcasts, or snipping American programs from cable stations, as you suggest we do with the advertisements themselves?

Sen. Davey: Let me point out that I'm less concerned about broadcasting than I am about print. In this country, we have the CRTC, an agency which Peter knows more about than anyone in the world, which serves extremely well. It's not the flaccid body the FCC used to be and I suspect still is. So I'm prepared to leave the concerns I have about broadcasting in the hands of the CRTC. I'm more concerned about print because there is no agency which can deal with it.

About the taxing legislation as it relates to magazines, I don't see that it inhibits the free flow of information at all. The only thing Canadian readers will be deprived of in Time is five pages--as someone once said, five lousy pages--of Canadian news, especially written in Montreal for Time Canada subscribers. I subscribe to Time because of the excellent window on the world it gives me--not withstanding the fact that it's a view through American-tinted glasses. That's why I think it's important that we have a Canadian news magazine, giving us a window on the world through the eyes of Canadians. It won't be substantially different, but there will be differences. For example, I wasn't overly pleased listening to radio and TV and reading newspapers as the Vietnam war wound to a close to read about "the enemy" this or "the enemy" that. I have no brief for the North Vietnamese, but they certainly were not the enemies of Canada. That's an example of the kind of problems we have.

The taxing legislation will not work any hardship at all because those magazines will still be available in the Canadian market. It just means we won't have a Canadian edition of Time. So what? Or we won't have the Reader's Digest ripping off the Canadian market. Those two magazines have taken off about 60 per cent of the available advertising revenue for Canadian magazines. There's not a Canadian consumer magazine publishing which has any certainty of survival as long as Time and Reader's Digest sort of cream off the top. If we lose the Canadian editions of Time and Reader's Digest, we'll still have Time and the Reader's Digest on the newsstands. I think it's a fail-safe situation.

Question for Sen. Davey: I've been interested in the U.S. border stations which beam their signals into metropolitan Canadian markets. You mentioned that there is legislation in Parliament to end what you refer to as "that unfortunate ripoff." Could you elaborate on this?

Sen. Davey: It's the same legislation as that for Time and Reader's Digest: that Canadians who advertise on American stations will no longer be able to deduct that in computing their income tax. It is the same principle applied to broadcasting. Hopefully, the legislation--a package--will pass when Parliament reassembles this fall.

Mr. Grant: The tax legislation is also directed toward broadcasting. It presents some difficult problems because there's no question that multinational corporations can still place advertising on those border stations through their New York offices. Canadian tax legislation can't help or hinder that one way or the other. It really will only dissuade local Canadian advertisers from placing ads on border stations in the United States to go and try to get back into the Canadian audience. The commission has worked a three-pronged attack on this.

One prong is tax legislation. The second is that where the programs are identical, the commission will require cable systems to substitute the Canadian program for the American. Nobody can be concerned about that. The third is probably the most controversial aspect. The idea is for cable TV systems to delete the commercials from the American programs coming in. That would kill the multinational ads, local Canadian ads, all ads. It would have substitutions of perhaps public service announcements--or think how immoral this would be--Canadian ads.

The fact is that the three Buffalo stations have commenced an action in the Federal Court of Canada against the Canadian Radio and Television Commission for authorizing a Toronto cable licensee to be able to do precisely that. The action was first heard last December in the court, and in January the court announced its unanimous decision on behalf of the CRTC. The Buffalo stations have since appealed it to the Supreme Court of Canada, and it will probably be heard in December or January. We expect to win. I say that just because it's a difficult legal action for the Buffalo stations to win because the nature of the action is a trademark, copyright, constitutional, very difficult kind of action to phrase in this unique technological problem. At the same time, there's a great deal of political negotiation going on between the State Department and the Department of External Affairs on whether the United States will put up with this. That's another question, of course.

Clearly there is some copyright liability to be concerned with, so that the program producers do not get hurt. Since I act for the commission in this action and will be arguing this in December, I can now speak in the commission's concern. It is that the appropriate party to be hurt should not be the program producer. But the Buffalo stations, or other border stations, have never in fact purchased the product they send into Canada on the basis of the Canadian audience. So that the price they paid for it has only an American price. The profit they make in Canada never goes back to the program supplier in the first place. It's a convoluted question with a difficult economics involved. But when you put these three approaches together, it might repatriate some of the $20 to $25 million a year, which amounts, I might add, to 10 per cent of the commercial revenue of all broadcasting stations in Canada, which is now placed on border stations in the United States.

Question for Mr. Grant: I couldn't resist suggesting a footnote to Mr. Grant's excellent presentation this morning, specifically to his reference to the Watergate analogy and to consequences of lying in the House during the parliamentary question period. That's what happened to Mr. Profumo back in 1963. The footnote is a limerick I heard on Fleet Street: "Look what you've done," said Christine. "You've wrecked the party machine. To lie in the nude is not very rude. But to lie in the House is obscene."

Mr. Grant: Wasn't she referred to as the notorious Cabinet-maker?

Question: Would the panelists speak on whether there has been much change in citizen attitude on these media problems recently? And would Sen. Davey talk about some of the major influences which Parliament considers in facing up to these matters?

Sen. Davey: The interesting experience which I had immediately following the publication of the Report was speaking to student audiences. I think I spoke at every university and an awful lot of community colleges across this country. It seems to me the student attitude, in this country at least, is quite different from five years ago. I'd be interested to know whether it is in your country. In those days, a lot of students felt I had copped out. I was catching it from the right wing of this community, from the newspaper publishers, who regarded even a Senate committee in media as an invasion of press freedom. I caught it also from the New Left when I spoke at universities. Students were saying you really copped out because what we need in this country is a newspaper version of the CRTC. Sure, radio and TV are in hand because of Juneau, but we had expected you to come forward with a comparable recommendation for print.

We rejected that notion at the time because the responsibility for print has to come from inside, and not be imposed by government. I regret to say that public concern has been minimal. In the overwhelming majority of Canadian homes this very evening, this will happen: the men will get home from work, the family will turn on its TV, not really caring what comes on, hoping it's a hockey game, knowing it won't be in the middle of August, much preferring to sit anesthetized in front of the tube, instead of being concerned about the problems we've been discussing so far.

I'm frankly not very optimistic about the public rallying and insisting on better newspapers and better magazines and publication companies. As I said, we have the press we deserve, not the press we need. The people of Canada still today would opt for some form of censorship of the mass media. I dare say that would be equally true in the United States. That's an appalling state of affairs. I don't think the leadership can really come from Parliament. Our committee made some headway; there's a series of press councils now established across Canada. The problem the press councils are having is that the public isn't interested in their existence. It's an alarming situation because the people aren't upset. The leadership isn't going to come from owners or from the working press. It probably has to come from people like yourselves who will inculcate students with a concern about professionalism. Until journalism becomes a profession, we're nowhere. I can't be more optimistic than that.

Question for Sen. Davey: I throw this out more as a devil's advocate in hoping to provoke you into an answer. Your interesting comment about press freedom is somehow difficult to juxtapose with the stance you take on the Time-Reader's Digest issue. How would you explain that if Time and Reader's Digest became Canadian-owned subsidiaries, the government would still not allow them to print content which is the same content as the U.S. publications? In other words, were those Canadian-owned subsidiaries to bring in the American content, the government would still abrogate freedom by refusing Time and Reader's Digest permission to print that material.

Sen. Davey: I don't think he's a devil's advocate. He's a Tory spy. I'm grateful for the question, but it's nonsensical. How can you suggest that we are in any way going to intrude on press freedom when Time will still be available on every newsstand in the country? I can't understand that. Please explain.

Question: It's very simple. You would dictate to a Canadian publication what or what not to publish.

Sen. Davey: I suppose I would, if you want to put it in those terms. There would be content requirements, of course. What we are interested in providing Canadians with is an outlook on the world through the eyes of Canadians. I spoke a few minutes ago about the publishers. We have the problem in spades with the American wire services. Most Canadian newspapers don't have any foreign correspondents abroad. Canadian Press, a cooperative news agency owned by publishers of Canadian newspapers, has two correspondents abroad. All the Vietnam news, for example, in this country was from American correspondents. I don't think there's anything really awful or devilish or intruding upon the free press to suggest that we want Canadian magazines, dealing with international matter, through Canadian eyes. The only substantially Canadian viewpoint of what's happening in Washington is through the CBC, which has correspondents around the world. If Time becomes 75 per cent Canadian-owned, that won't be enough. There will have to be some Canadian content requirements. But Time will still be coming into the country, and you will still be able to buy it.

Question: I am really sympathetic to your position, but I want to get some answers because I believe it would interest this audience. For instance, is the government prepared to subsidize Canadian wire services as has been done in France, for example, in order to meet the requirements you're talking about?

Sen. Davey: I can't speak for what the government would be prepared to do. The government did subsidize Canadian Press at its beginning. I'm not speaking for the government now, but personally I would hope that the government might be prepared to subsidize wire services.

Question: As someone who teaches Canadian students who are influenced by Globe and Mail editorials (I'm sure you know precisely what I'm talking about) I find it difficult to answer questions students raise about how an almost wholly owned Canadian magazine reacts when it receives an edict that its content must be "70 per cent different." What does that mean?

Sen. Davey: It doesn't mean it has to be Canadian. It means it has to be different from the American publication.

Mr. Grant: I think there is a simple explanation. It's one that lawyers would probably think of first. If you were examining the legislation and trying to think of loopholes, here is a perfectly legal one which would make a farce of the whole legislation--if that extra requirement wasn't added.

I could put together three or four nominee owners who would own 75 per cent of the voting shares, run the corporation and through a very neat legal package have a licensing agreement for the use of American material, which would result in all the profits ending up in the licensors'--or American--hands.

From a legal standpoint, that would comply with the legislation. But from a practical standpoint, it would make a farce of it because there wouldn't be any difference in the question of who controls the content. It's American control, not Canadian. So what we're trying to do here is just plug the obvious loophole that any lawyer who can draft would think of. Names of people on the board of directors and where they reside make a useful test, but it's not the only test.

There's another issue that is worth talking about here. When you talk about the broadcasting industry in this country, you're talking about a privilege, not a right. There are limited frequencies to broadcast on. Not everyone who wants to broadcast can. So we have to choose. On what basis do we choose? We say that when you take over a TV broadcast license, you're going to make a pile of money. Therefore to you goes a special fiduciary duty, a trust if you want--or in American jurisprudence, particularly in the Red Lion case, you are the producer or the proxy for the public. You have to keep up with the public responsibility.

In Canada, that public responsibility is set out in the broadcasting act and includes a number of things like high quality and an appropriate level, of the use of Canadian creative and other resources. Not of course to the exclusion of the world resources, but substantial use of Canadian resources. Now that's the good, the pro bono, that you have to put in to deserve your use of the license. It's not a right to broadcast, it's a privilege, and you earn it by performing these public obligations.

Now we examine the role of Time and Reader's Digest and ask: "What have they done to earn the right for the very substantial profits they can make out of dumping editorial contents from the United States, adding a few pages of Canadian matter and making profits on it?" The carrying on of business in Canada--in other words the right to have Canadian ads --is the privilege here. And that privilege must be accompanied by a commensurate obligation to do something for the benefit of the Canadian culture.

That is the principle behind the disruption of the commercial messages from Buffalo, because we say that Buffalo is not fulfilling the obligations of a Canadian station. There is no Canadian content on it; it doesn't assist the Canadian culture. And so it may not have the rights of a Canadian commercial station in Toronto to have Canadian advertising and to make money out of Canada.

Sen. Davey: I'm so grateful the gentleman mentioned the Globe and Mail. The publisher of the Globe and Mail is also the chairman of the board of F.P. Publications, which publishes 10 or 11 of the biggest newspapers across Canada. This fact is not ever disclosed in the masthead of the Globe and Mail. Now the Globe and Mail has editorialized consistently against this proposed magazine legislation. F.P. Publications controls the printing company where Time Canada and Reader's Digest are printed. That's a clear conflict of interest which had never been disclosed until I raised it in the Senate of Canada. It got some press attention, but not enough.

Question: Sen. Davey, how can you propose the dismantling of concentrated media ownership in Canada, when Canadians, unlike our neighbors, the Americans, are unwilling to invest the large amounts of capital necessary in Canadian industry?

Sen. Davey: I think the answer to that is that Canadians are willing, given the opportunity. Our government hasn't given them the opportunity. I would hope that that is the direction in which the government is moving. As you know, in terms of the foreign investment review agency, we've made considerable strides. I think there's a growing sense of reality in this country that we have to do something about buying back some of these corporations. I think things are moving in the right way, but I agree with you that it is painfully slow.

Prof. Gillmor: You've been an attentive audience. We appreciate the hard-hitting questions. Thank you very much, and our special thanks to the panelists.